UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HOMER RAY BROWN, Appellant, v. EDMUND G. BROWN, Governor, State of California, et al., Appellees.	No. 21005

APPELLEES' BRIEF

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JURISDICTION

The jurisdiction of the United States District Court to entertain appellant's civil action under Title 42, United States Code, section 1983 was conferred by Title 28, United States Code section 1331. The jurisdiction of this Court is conferred by Title 28, United States Code, section 1291. Proceedings in forma pauperis are authorized by Title 28, United States Code section 1915.

STATEMENT OF THE CASE

Appellant, an inmate of San Quentin Prison, initiated an action under the Federal Civil Rights Act, 42 U.S.C. 1983, for general damages in the amount of $1,350,000.00, and punitive damages in the amount of $2,150,000.00 against appellees Edmund G. Brown, the Governor of the State of California, and Lawrence E. Wilson,

the warden of San Quentin Prison. The complaint was filed in the District Court on February 11, 1966 (TR 1)[1]. On that same day a summons was issued to the appellees (TR 1).

On March 3, 1966, appellees filed a motion to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure on the grounds that the complaint failed to state a claim against appellees upon which relief could be granted (TR 29). Appellant filed a motion in opposition on March 10, 1966 (TR 36).

In an order filed on March 17, 1966, after consideration of the complaint, the notice of motion and memorandum of points and authorities submitted by defendants, and other documents and papers submitted to the court by appellant, the court granted appellees' motion and dismissed the action (TR 50).

In an order filed on April 20, 1966, the court granted appellant's motion of March 22, 1966 (TR 52) for a certificate of probable cause and leave to appeal in forma pauperis (TR 63).

SUMMARY OF APPELLEES' ARGUMENT

The District Court properly dismissed appellant's complaint for failure to state a cause of action. Inasmuch

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1. The Transcript of the Record on Appeal.

as appellant's complaint contains merely conclusionary allegations, it is inadequate to state a claim under the Federal Civil Rights Act. Moreover, his claim of denial of reasonable access to the courts is conclusively rebutted by the papers filed by appellant.

ARGUMENT

In his complaint, appellant makes the following "Claims of Specific Deprivations:"

That appellees have conspired to "harrass [sic], intimidate, terrorize, beat, and abuse" him in an attempt to prevent him from pursuing his "present litigation in the United States Federal District Court numbered Misc. 1299 in the Northern District for California" (TR 8);

That appellees "beat, kicked, knocked, stomped, thrashed, and cursed" appellant to force him to make a statement concerning another case (TR 10);

That appellant has been placed in solitary confinement to accomplish such harassment;

That appellees have confiscated various legal materials and papers pertinent to the above case (TR 11).

In dismissing appellant's cause of action, the District Court characterized his complaints as follows:

> "By way of mere conclusionary allegations, the complaint charges defendants with seeking in various generally described ways to obstruct his constitutionally guaranteed reasonable

access to this Court." (TR 50).

The court thus held the complaint inadequate to state a cause of action under the Federal Civil Rights Act. In addition, the court found that appellant's contention that appellees had acted to deny him reasonable access to the District Court was conclusively rebutted both by the papers filed by appellant in this case and by other papers which that court had received from him.

The District Court was clearly correct in this ruling.

In an action for damages under the Federal Civil Rights Act, conclusionary allegations are inadequate to state a cause of action; highly specific facts must be alleged. See, e.g., Pugliano v. Staziak, 231 F.Supp. 347, 349 (W.D. Pa. 1964); Roberts v. Barbosa, 227 F.Supp. 20, 22 (S.D. Calif. 1964); United States v. Bolsinger, 211 F.Supp. 199, 200-01 (W.D. Pa. 1962), aff'd., 311 F.2d 215 (3rd Cir. 1962), cert. denied, 372 U.S. 931 (1963). This rule is a reaction to the common prison technique of harassing and annoying correctional personnel in an effort to undermine prison discipline and control. See, e.g., Weller v. Dickson, 314 F.2d 598, 602 (9th Cir. 1963) (concurring opinion); Pugliano v. Staziak, supra; Roberts v. Barbosa, supra.

"We know from sad experience . . . that imprisoned felons are seldom, if ever, deterred

by the penalties of perjury. They do not hesitate to allege whatever they think is required in order to get themselves even the temporary relief of a proceeding in court. The prospect of amercing their jailers in damages must be a most tempting one, even if it will not get them their freedom. The disruption of prison discipline that the maintenance of such suits, at government expense, can bring about, is not difficult to imagine." Weller v. Dickson, supra, at 602.

In this suit appellant has asked three and one half million dollars in general and punitive damages for the alleged violations of his rights. The comment of the court in Roberts v. Barbosa, supra at 23, is particularly appropriate in this case. After stating that a witness may be impeached by a conviction, the court observed that there was no sound reason why this salutary rule of law should not induce just a little scepticism concerning the good faith of the prisoner in view of his exorbitant demands. In Roberts the prisoner had asked for slightly more than two and one half million dollars in actual and punitive damages.

In Higgins v. Steele, 195 F.2d 366, 369 (8th Cir. 1952) quoted with approval in Weller v. Dickson, supra, at 602 (concurring opinion), the court observed that although

it is important that no prisoner be denied justice, it is also "important that the prison authorities, government counsel, and the courts be not harassed by patently repetitious, meritless, frivolous or malicious proceedings."

In his complaint, appellant alleges that the appellees have attempted, by beatings and solitary confinement, to deprive him of access to the court in a particular case, but not that he has generally been denied access to the courts. This contention is patently spurious. By his own admission, the case, Brown v. Brown, Misc. 1299, was not only filed in the District Court, but was dismissed by the order of that court, not withdrawn by appellant through any pressure exerted by appellees. See TR 5. Moreover the papers filed by appellant in the instant suit conclusively rebut any allegation that access to the court has been denied him. See Stiltner v. Rhay, 322 F.2d 314, 316 (9th Cir. 1963); Draper v. Rhay, 315 F.2d 193, 197 (9th Cir. 1963); Siegel v. Ragen, 88 F.Supp. 996, 1000 (N.D. Ill. 1949), aff'd., 180 F.2d 785 (7th Cir. 1950), cert. denied, 339 U.S. 990 (1950).

The two cases cited by appellant are inapposite to the present case. In one, Spires v. Bottorff, 317 F.2d 273 (7th Cir. 1963)(AOB 8), there was a denial of access to the courts. In the other, Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir. 1961)(AOB 8), this court upheld the validity of prison regulations limiting the use of legal

materials.

Appellant argues to this court on appeal that although his right to reasonable access to the courts was not "totally obstructed", the assault and solitary confinement designed to prevent such access and to elicit incriminating statements, and the confiscation of legal material constitute cruel and unusual punishment (AOB 7, 9).

An examination of appellant's brief, filed in propria persona, shows the absurdity of his allegation that legal papers pertinent to his litigation in court have been confiscated. While appellant has no absolute right to conduct legal research, see, e.g., In re Chessman, 44 Cal.2d 1, 10 (1955), it is obvious that he has had access, not only to the courts, but to both the record in this case, and to legal papers, documents, and research materials. Obviously, he has had the opportunity to carry out such research.

It is clearly the law that the imposition of solitary confinement does not constitute cruel and unusual punishment nor provide the basis for a cause of action for which relief can be granted under the Civil Rights Act. Harris v. Settle, 322 F.2d 908 (8th Cir. 1963); United States v. Ragen, 237 F.2d 953 (7th Cir. 1956); Roberts v. Barbosa, supra at 23.

Even assuming the truth of appellant's allegation of an alleged attack by the "agents of San Quentin

Prison", the complaint sets forth no more than an assault which would constitute a violation of state law, but does not violate any federally protected right. See, e.g., United States v. Ragen, supra; Miles v. Armstrong, 207 F.2d 284 (7th Cir. 1953); Bryant v. Harrelson, 187 F.Supp. 738 (S.D. Tex. 1960).

None of the cases cited by appellant (AOB 7-9), in support of his assertion that he has properly stated a cause of action under the Civil Rights Act, do in fact support his position. In United States v. Pate, 223 F.Supp. 202 (N.D. Ill. 1963), the complainant had been made ineligible for parole with a consequent extension of his incarceration because he had been labeled incorrigible on the basis of an act done in self-defense. As against a motion to dismiss the court held this sufficient to raise two constitutional issues: (1) whether the power in the warden to lengthen a sentence violated due process of law, and (2) if such power is constitutional, whether its use against a prisoner who acted in self-defense is so out of proportion to the offense as to be cruel and unusual punishment. The situation alleged is thus totally different from the instant case.

Contrast also the situation in Gordon v. Garrson, 77 F.Supp. 477 (E.D. Ill. 1948) cited by the court in United States v. Pate, supra. There the prisoner had alleged inter alia that he had been hit over the head

with a blackjack by an officer, resulting in an infection of the middle ear and complete deafness in that ear. This plus the other specific allegations of mistreatment was held sufficient to state a cause of action.

In Redding v. Pate, 220 F.Supp. 124 (N.D. Ill. 1963), the deprivation alleged was that of essential medical treatment for an epileptic with severe headaches. McCollum v. Mayfield, 130 F.Supp. 112 (N.D. Calif. 1955) also involved the refusal of medical aid. This refusal resulted in permanent paralysis.

United States v. Jackson, 235 F.2d 925 (8th Cir. 1956) involved the sufficiency of an indictment under the Civil Rights Statute, 18 U.S.C. § 242, and not the sufficiency of the allegations of a complaint under section 1983.

Bryant v. Harrelson, supra, directly supports not appellant's, but appellees' position. The prisoner's allegation of a whipping without an allegation of serious physical damage such as that found in Gordon v. Garrson, supra, was held insufficient to state a cause of action under the Civil Rights Act.

It is thus clear that in order to state a claim under the Federal Civil Rights Act, the complaint must allege not only highly specific facts concerning the acts of the state officers but must also be highly specific as to the serious damage resulting. The acts

alleged by appellant in this case thus do not constitute cruel and unusual punishment.

Appellees, of course, do not maintain that appellant has no remedy if he has been improperly assaulted by prison officials or if the conditions of his confinement are improper. Under California State law, a petition for a writ of habeas corpus may be used to correct such conditions. See e.g., In re Riddle, 57 Cal.2d 848 (1962) (cited by appellant AOB 7); In re Ferguson, 55 Cal.2d 663, 669 (1961); In re Chessman, 44 Cal.2d 1, 9 (1955). In addition, state law provides penal sanctions against the conduct appellant alleges in his complaint. See, e.g., Calif. Pen. Code §§ 147, 149, 673, 2650-53.

CONCLUSION

Insofar as appellant's complaint contains relatively specific allegations, the matters complained of do not constitute violations of any federally protected right. The complaint as a whole is largely phrased in merely conclusionary terms and thus fails to state a claim upon which relief can be granted under the Federal Civil Rights Act. As the court observed in United States v. Bolsinger, supra at 201: ". . . if the rule were otherwise, every complaint against a State official by the simple expedient of averring conclusions would be cognizable in the federal courts under the Civil Rights

Act." Moreover, appellant's claim of denial of access to the courts has been conclusively rebutted. For these reasons, it is respectfully requested that the order of the District Court dismissing the complaint be affirmed.

DATED: August 29, 1966

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